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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 293

LEBANON STEEL FOUNDRY (A PENNSYLVANIA CORPORATION), PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinions of the court below (R. 248–257) are not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 70–101) are reported in 33 N. L. R. B. 233.

JURISDICTION

The decree of the court below (R. 258) was entered on June 29, 1942. The petition for a writ of certiorari was filed on August 11, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of

February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

The sole question presented in this case is whether there is substantial evidence to support the Board's finding that the majority of petitioner's employees, by signing certain check-off cards, designated Steel Workers Organizing Committee as their collective bargaining representative.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., sec. 151 *et seq.*) are set forth in petitioner's Appendix (Pet. 21–23).

STATEMENT

Upon the usual proceedings, the Board on July 10, 1941, issued its decision (R. 70–101) in which it found that petitioner had refused to bargain collectively with Steel Workers Organizing Committee (hereinafter called the Union), in violation of subsections (5) and (1) of section 8 of the Act. Petitioner offers no challenge to the Board's findings except the finding that the Union had been designated as collective bargaining representative by a majority of petitioner's employees in the appropriate unit.[1] We therefore omit a statement of the

[1] Petitioner also admits, for the purposes of the question presented, that during the period bargaining was requested by the Union, the Union had secured signed check-off cards from a majority of petitioner's employees in the appropriate unit (Pet. 4).

evidence supporting the Board's findings except the evidence pertaining to the single issue which petitioner raises in this Court. On that issue, the Board's findings and the supporting evidence are as follows:[2]

Union activities among petitioner's employees began in September 1940, when a group of employees approached a Union organizer at a nearby steel plant and secured membership application cards from him (R. 74; 103–105, 121, 137). Each membership application card contained, in addition to an application for membership, an express designation of the Union as collective bargaining representative of the signer (R. 74; 137). After a number of these cards had been executed by petitioner's employees, the Union's district representative met with some of the employees, at their request, in September 1940 (R. 74; 103, 121). At this meeting, when the employees expressed a desire for a check-off or deduction of union dues from their wages, they were instructed by the Union representative to use "Wage Deduction Authority" or check-off cards in lieu of membership application cards in soliciting Union members (R. 74–75; 105, 126). Check-off cards, to be signed by those employees who previously had executed membership application cards, were distributed and, there-

[2] In the following statement, references preceding the semicolons are to the Board's findings, and the succeeding references are to the supporting evidence.

after, only check-off cards were used in obtaining union members (R. 75; 105–107, 126–127).

The check-off cards were of two types, used interchangeably, and read as follows (R. 75–76; 106, 123–124, 137–138):

WAGE DEDUCTION AUTHORITY

No.---------- Dated----------

To the Paymaster of

I hereby authorize you to deduct from my wages one dollar ($1.00) per calendar month, beginning with the month of ----------, 19---- provided I have worked a total of five (5) days or more during the calendar month.

This payment to be sent to the Secretary-Treasurer of the S. W. O. C., David J. McDonald, 1500 Commonwealth Building, Pittsburgh, Pa.

This authority to be effective during the life of the agreement. This authority will automatically be cancelled if, as and when the labor and working agreement between your Company and the S. W. O. C. terminates.

---------- ----------

(Signature) (Address)

WAGE DEDUCTION AUTHORITY

No.---------- Dated----------

To the paymaster of

I hereby authorize you to deduct from my wages union dues amounting to one dollar ($1.00) per calendar month, provided I have

worked a total of five (5) or more days during the calendar month; and my initiation fee (amount specified below) which shall be deducted within one month from the date you received this card from the Financial Secretary of the local union.

Money so deducted to be sent to David J. McDonald, Secretary-Treasurer of the S. W. O. C., 1500 Commonwealth Building, Pittsburgh, Pennsylvania.

This authority shall only be effective during a collective bargaining agreement between the S. W. O. C. and your Company that includes the check-off system.

Initiation fee, $----------

---------- ----------

(Signature) (Address)

The uncontradicted testimony of the Union's district representative showed that check-off cards had been used throughout his district to signify Union membership as well as authority to deduct Union dues; that the Union customarily organized plants in the area by having employees sign such cards; and that employers operating such union-organized plants accepted check-off cards as proof of the desire of signatories to have the Union represent them (R. 76; 106, 129–131).

Upon the basis of the foregoing findings and evidence, the Board found that petitioner's employees who signed the check-off cards had thereby designated the Union as their representative for collective bargaining purposes (R. 77).

The Board made further findings that the Union, thus designated as collective bargaining representative by a majority of petitioner's employees (R. 79–80) in an appropriate unit (R. 74), sought to bargain with petitioner on several occasions from December 16, 1940, to January 23, 1941, but that petitioner at all times failed and refused to bargain collectively with the Union in good faith (R. 80–98), in violation of Section 8 (5) and (1) of the Act (R. 98, 99–100). At no time during the fruitless negotiations did petitioner raise the issue now presented or voice any doubts as to the Union's majority status (R. 80–82, 84–85, 94–95, 96).

The Board's order required petitioner to cease and desist from its unfair labor practices; to bargain collectively, upon request, with the Union; and to post appropriate notices (R. 100–101).

On July 29, 1941, petitioner filed in the court below a petition to review and set aside the Board's order (R. 138–147). The Board answered, requesting enforcement of its order (R. 148–152). On June 29, 1942, the court below, Stephens, J. dissenting, handed down its opinion and entered its decree affirming and enforcing the Board's order (R. 248–258).

ARGUMENT

1. The sole issue here presented is whether evidence supports the Board's finding (R. 80) that the Union was designated as collective bargaining rep-

resentative by petitioner's employees, a majority of whom admittedly signed check-off cards. This ultimate finding is based upon the subsidiary finding that the authorizations of wage deductions in the circumstances of this case evidenced a "present desire to become and be a member of" the Union, and in any event evinced "a desire to have [the Union] * * * negotiate a contract" (R. 77). The Board's finding is undeniably proper. Uncontradicted evidence establishes that the check-off cards were regarded and used as membership application cards both by the Union and by the subscribing employees (R. 105–107, 126–127). Such check-off cards were substituted for membership application cards as a result of a request from the employees to the Union representatives for the establishment of a check-off of union dues from their wages (*id.*). The substitution was made at the beginning of the Union's campaign to organize the employees in petitioner's plant (*id.*), and all those who had already signed membership application cards signed the check-off cards as well, after which only the latter were used (R. 126–127).

Petitioner's contention that the employees who signed check-off cards did not thereby intend to designate the Union to bargain for them ignores the elementary and universally known fact that employees join and affiliate with unions for the primary purpose of collective bargaining over wages, hours, and working conditions. The Courts and

the Board have heretofore found that designation of a union as collective bargaining representative was manifested by mere application for union membership, subscription of union registration cards, participation in a strike vote taken by a union, participation in a strike called by a union, and acceptance of strike benefits from a union. Thus, in *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 338–339, the Court sustained the Board's finding of designation for collective bargaining where the employees had signed membership applications without paying dues or initiation fees. See also *In re National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409, 427–428, enf'd as to this point in *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9).[3]

[3] Also *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678, 680 (C. C. A. 6), certiorari denied, 308 U. S. 568 (union membership application); *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 687 (C. C. A. 1) (union membership application); *Matter of Elbe File and Binder Co., Inc.* and *Bookbinders, Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906, 910 (union registration cards); *Matter of Clifford M. DeKay* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*, 2 N. L. R. B. 231, 237 (union membership applications, although dues or initiation fees not yet paid and not yet admitted to membership); *In re C. A. Lund Company* and *Novelty Workers Union, Local 1866*, 6 N. L. R. B. 423, 435, enf'd on this issue and remanded on other grounds, *National Labor Relations*

Moreover, by their very terms, the check-off cards signed in this case manifest a desire to designate the Union as collective bargaining representative. The cards specifically provide for deductions from wages for "union dues" and "initiation fee"; they make express reference to a contemplated agreement between the Union and petitioner, viz, "the labor and working agreement" and "a collective bargaining agreement" (R. 75–76). Unless this language is meaningless, it necessarily signifies the signer's desire that the Union represent him, bargain for him, conclude an agreement, and receive the checked-off wages as union dues. Any other interpretation is wholly unrealistic. But if there were any reason to doubt that this was what the parties intended, all doubt would be dispelled by the fact that check-off cards customarily were used throughout the Union district to denote Union membership as well as authority to deduct Union dues from the employees' wages (R. 106, 129–131).

2. The question in this case is not one of general importance. It has not arisen heretofore, and the Board's experience does not show it to be a prominent issue. Petitioner's suggestion (Pet. 7, 19)

Board v. *Lund*, 103 F. (2d) 815 (C. C. A. 8) (participation in strike vote taken by union); *In re Century Mills, Inc.*, 5 N. L. R. B. 807 (participation in strike called by union); *Denver Automobile Dealers Association*, 10 N. L. R. B. 1173 (participation in strike called by union); *In re Rabhor Co., Inc.* and *International Ladies' Garment Workers Union*, 1 N. L. R. B. 470, 474–476 (acceptance of strike benefits from union).

that doubts regarding union designation might arise in the minds of employers in other cases as a result of the decision below, overlooks the fact that, where such doubts arise in good faith, adequate machinery exists whereby they may be resolved.[4] (See section 9 (c) of the Act, 29 U. S. C. 159 (c); see also Art. III, National Labor Relations Board Rules and Regulations, Series 2, as amended effective September 6, 1941, where the various means are detailed of determining whether a Union represents a majority of the employees.) An employer who in good faith entertains doubt as to whether a Union actually represents a majority of his employees and for that reason refuses to recognize the union as the employees' representative, does not commit an unfair labor practice in refusing to bargain with that union until adequate evidence is submitted to him to show that the union is the designated bargaining representative (see Fifth Annual Report of the National Labor Relations Board, pp. 45–46, Sixth Annual Report of the National Labor Relations Board, p. 50; see also *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 868 (C. C. A. 2, certiorari

[4] Petitioner had no such doubts here. See *supra*, p. 6. The record shows that petitioner was not misled by the check-off cards. At both the December 21 and January 10 meetings the Union claimed to represent a majority of the employees and offered the check-off cards as proof. Neither time did petitioner express doubt that the Union did represent a majority of the employees, and neither time did petitioner inspect the check-off cards. (R. 81, 84, 85.)

denied, 304 U. S. 576). Petitioner's own refusal to bargain collectively with the Union was not predicated on doubt as to the majority status of the Union, and petitioner showed profound disinterest in the Board's proposal to hold an election to determine the bargaining representative (R. 90–92). Hence the problem presented in the instant case, which has not heretofore occurred in the experience of the Board, does not present a question of general importance.

CONCLUSION

The decision of the court below enforcing the Board's order is correct. No conflict or other reason for the further review of the order is presented. It therefore is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942